

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Order Approving Proposed Qualifying Facility Contract Amendments, Agreements and Certain Amendments thereof Executed After July 31, 2001; and Authorizing Edison's Recovery of Payments Under the Proposed Contract Agreements and Amendments.

Application 02-01-035
(Filed January 25, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING SUPPLEMENTAL INFORMATION**

This ruling requests supplemental information from Southern California Edison Company (Edison) regarding its Application (A.) 02-01-035 to justify its request for Commission approval of amendments and agreements (Agreements) concerning 16 different qualifying facilities projects (QFs).

Background

Edison filed A.02-01-035 seeking expedited, *ex parte* Commission approval of the proposed QF Agreements on January 25, 2002. Edison states the Agreements are intended, among other things, to resolve disputes between Edison and various QFs arising as a result of suspension of energy payments during November 1, 2000 through March 26, 2001. Edison contends these Agreements are substantially based upon agreements approved by the Commission to resolve disputes with other QFs. Edison states it was unable to

enter into these Agreements by the Safe Harbor Date,¹ and therefore it filed this application seeking approval of the Agreements and authorization to recover payments made under the Agreements in rates. Attached to the application is the testimony of Bruce McCarthy (Exhibit No.SCE-18) and Dr. Richard Davis (Exhibit No. SCE-19) in support of the Agreements. Exhibit No. SCE-18 provides background and those factors Edison relied upon to conclude the Agreements are reasonable. Exhibit No. SCE-19 analyzes net present value of the energy costs for two of the Agreements, and provides a table showing the various energy costs under Short Run Avoided Cost (SRAC) pricing alternatives and fixed costs of 5.37 cents per kilowatt-hour (kWh).

Edison states that responsible agents for 10 of the 16 QF projects had either executed or committed to the standard settlement² prior to August 1, 2001, but for various reasons were unable to ratify these agreements. Edison also requests approval for two additional QF agreements that modify the current SRAC pricing and three QF agreements with nonstandard energy pricing that do not change the price for energy but otherwise incorporate previously approved settlement terms. One additional QF agreement is the subject of a separate application.³

¹ The Safe Harbor Date is defined in Decision (D.) 01-09-021 as July 31, 2001. As provided in D.01-09-021 the Commission limited its prior approval to agreements entered into on or before July 31, 2001. Amendments or agreements entered into after July 31, 2001 require a separate application for approval as stated in D.01-10-069 (p. 11).

² See D.01-06-015 providing for fixed energy prices of 5.37 cents per kWh for five years as an option not requiring prior Commission approval.

³ See A.01-11-033, Application of Edison for Approval of Settlement Agreement with NP Cogen, Inc.

On February 6, 2002, the California Cogeneration Council (CCC) filed a response in support of Edison's application, and in particular, support for the agreement with U.S. Borax, one of the two QF agreements proposing modified SRAC pricing. On March 4, 2002, the Office of Ratepayer Advocates filed a protest limited to the proposed agreement with Ontario Cogeneration, Inc. (Ontario), the other QF agreement proposing modified SRAC pricing. ORA contends that it is uncertain whether the Ontario agreement pricing formula will provide benefits to ratepayers nor has Edison provided an analysis of litigation risk. Therefore, ORA argues that the Ontario agreement be denied.

On March 14, 2002, CCC filed a Motion For Leave to File Response to ORA's Limited Protest (Motion).⁴ CCC's response argues that regardless of the Commission's action with respect to Ontario, the other 15 QF project agreements should be approved. CCC also argues that the Ontario agreement should be approved as SRAC pricing is an unresolved matter and that there is value in avoiding litigation regardless of whether it is quantified. Finally, CCC contends that approval of the Agreements will help ensure that QFs continue to provide power thus avoiding future energy capacity problems.

Edison provides a number of arguments explaining why the Agreements are reasonable including: (1) the fixed energy prices are the same as energy prices adopted for other QFs prior to the Safe Harbor Date, (2) approval will avoid litigation risk, and (3) the Agreements will maintain the QF relationship with Edison.

⁴ Although the 15-day response period to CCC's Motion has not elapsed, CCC's response is provided for informational purposes.

Discussion

Although Edison provides certain qualitative arguments supporting its request that the Commission approve these Agreements, there is little quantitative analysis upon which the Commission can judge the reasonableness of the application. Neither the application nor the testimony explains why ratepayers should pay significant energy cost premiums for these Agreements.⁵ Furthermore, apart from Edison's explanation of why certain QF projects were late in being ratified, the application does not provide sufficient justification for exempting these QF projects from the Safe Harbor Date provision adopted in D.01-09-021.

Therefore, this ruling requests Edison to provide supplemental information or analysis to support its request, including quantitative analysis if available. This information and analysis should reasonably support Edison's argument that ratepayers should pay a modified SRAC price that exceeds projected SRAC costs using the current approved SRAC formula.⁶ This information and analysis should justify the value to ratepayers of establishing fixed energy prices that are significantly greater than forecasted SRAC costs. Edison may also provide its cost estimates of litigation risk in further support of its request. Edison may file a motion for a protective order for information and analysis related to cost estimates of litigation risk.

⁵ Edison estimates that energy costs under fixed rates will exceed SRAC costs by 30- to 70% during the period of the fixed rate Agreements. (Exhibit No. SCE-19, Table 3, pp. 8-9.)

⁶ Edison estimates that using the modified SRAC price additional energy payments above current SRAC costs to U.S. Borax will be \$1.752 million and additional energy payments to Ontario will be \$240,000 (Exhibit SCE-18, p. 17).

Edison states that expeditious approval of the application is requested in order to ensure that the full benefits of the Agreements are realized in the time frames contemplated by the parties, to resolve lingering uncertainties, and to avoid resumption of litigation. Therefore, Edison is encouraged to file this information expeditiously.

Therefore, **IT IS RULED** that:

1. Additional information or analysis is required to justify Southern California Edison Company's (Edison) Application 02-01-035.
2. Edison shall provide supplemental information or analysis supporting its request that ratepayers pay energy costs that exceed energy costs under current Short Run Avoided Cost pricing.
3. Edison shall provide any pertinent information justifying its request that certain qualifying facility projects be exempted from the Safe Harbor Date provision of Decision 01-09-021.
4. Edison may provide information or analysis concerning its estimate of litigation risk regarding the amendments and agreements.
5. Edison may request that litigation risk information or analysis be filed under protective seal.

Dated March 22, 2002, at San Francisco, California.

/s/ BRUCE DeBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Supplemental Information on all parties of record in this proceeding or their attorneys of record.

Dated March 22, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.